

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

PETER D. KINDER,  
MISSOURI LIEUTENANT GOVERNOR, et al., )

Plaintiffs, )

v. )

TIMOTHY F. GEITHNER,  
SECRETARY OF TREASURY, et al.. )

Defendants. )

Cause No: 1:10-cv-00101-RWS

**PLAINTIFFS' MOTION TO COMPEL DEFENDANT TO ANSWER**

Pursuant to Federal Rules of Civil Procedure 12 and 15, and in support of their motion to compel Defendants' answer or other responsive pleading, Plaintiffs state the following:

1. This case commenced on July 7, 2010 with the filing of Plaintiffs' Complaint. (Dkt. No. 1).

2. The original complaint named Secretary of Treasury, Timothy F. Geithner, Secretary of Health and Human Services, Kathleen Sebelius, Attorney General, Eric H. Holder, Jr., and Secretary of Labor, Hilda L. Solis as defendants in their official capacity. (*See id.*)

3. The original complaint was served upon these defendants as required by Federal Rule of Civil Procedure 4, and the last defendant was served the original complaint on July 21st. (*See* Affidavit of Mark F. (Thor) Hearne, II, Dkt. No. 21).

4. On August 3rd, Missouri voters passed the Missouri Healthcare Federal Act.

5. On August 18th, Plaintiffs filed their motion for leave to file a first amended complaint together with their amended complaint (Dkt. Nos. 15-16). This Court granted leave to amend the complaint the following day (Dkt. No. 17).

6. Each Defendant was then served this amended complaint, as provided by the Federal Rule of Civil Procedure 4. (*See* Affidavit of Mark F. (Thor) Hearne, II, Dkt. No. 21).

7. In addition to each defendant receiving notice of this action by actual service of both the original and amended complaint, this case has received significant national press coverage and is generally known to those (such as the U.S. Department of Justice) following this and other litigation challenging the constitutionality of the federal health care law known as the Patient Protection And Affordable Care Act and its sister statute, Health Care and Education Reconciliation Act (“PPACA”). (*See* generally, Associated Press, “*Mo. Lt. Gov. sues to block federal health care law*,” July 7, 2010).

8. Two days after the original complaint was filed, Missouri Attorney General Chris Koster (who was not a named party and was not served with a Complaint) learned of this case and filed a motion to intervene and memorandum in support. (Dkt. Nos. 4-5). (Following the filing of the amended complaint, Attorney General Koster withdrew his motion to intervene. (Dkt. No. 18).)

9. Federal Rule of Civil Procedure 12(a)(2) provides, “A United States officer or employee sued only in an official capacity ... must serve an answer to a complaint ... within 60 days after service ....” (Secretaries Geithner, Sebelius, Solis, and Attorney General Holder are each sued in their official capacity.)

10. Federal Rule of Civil Procedure 15(a)(3) provides, “Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.”

11. More than four months have passed since this case commenced, almost four months have passed since the Defendants were served the original complaint, and now, more than two months have passed since Defendants were served with the amended complaint.

12. Yet, to date, each of the Defendants has failed to answer or otherwise file any responsive pleading.

13. This case concerns a challenge to federal legislation which infringes upon those rights the United States Constitution guarantees to the Missouri citizens bringing this case.

14. This case also concerns the constitutionality of certain provisions of PPACA, the sweeping federal healthcare mandate which affects each of the Plaintiffs and millions of other similarly situated Missourians.

WHEREFORE, Plaintiffs respectfully request this Court order the Defendants to comply with the Federal Rules of Civil Procedure and file their answer or other responsive pleading within no more than fourteen days from today, on or before November 24.

November 10, 2010

**ARENT FOX, LLP**

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